

ASSEMBLY BILL

No. 55

Introduced by Assembly Member Gatto

December 6, 2010

An act to amend Section 679 of the Unemployment Insurance Code, relating to unemployment insurance.

LEGISLATIVE COUNSEL'S DIGEST

AB 55, as introduced, Gatto. Unemployment compensation: employer: motion picture industry.

Existing unemployment insurance law requires any employing unit that is a motion picture payroll services company, as defined, to be treated as an employer of a motion picture production worker, as defined, and to file a statement of intent with the Employment Development Department. Existing law requires any employment unit operating as a motion picture payroll services company that quits business to file with the director a final return and report of wages, as provided, and to notify the motion picture production companies and allied motion picture services of its intent to quit business, as provided. Existing law requires the employing unit's status to be applied to its affiliated entities, as defined. Existing law requires the director to notify an entity, as provided, that does not satisfy the requirements of a motion picture payroll services company, as provided, of the facts and circumstances upon which the determination was made. Existing law authorizes the department to make a specified report to the Legislature. Existing law repeals these provisions on January 1, 2012.

This bill would delete the authorization of the department to make the report and the January 1, 2012, repeal date.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 679 of the Unemployment Insurance
2 Code is amended to read:
3 679. (a) Notwithstanding Sections 606.5, 621, and 678, for
4 the purposes of this code, “employer” means any employing unit
5 that is a motion picture payroll services company ~~who~~ *that* pays
6 and controls the payment of wages of a motion picture production
7 worker for services either to a motion picture production company
8 or to an allied motion picture services company. ~~The motion picture~~
9 ~~payroll services company must also have filed, and files~~ a timely
10 statement of its intent to be the employer of motion picture
11 production workers pursuant to subdivision (b).
12 (b) (1) Any employing unit meeting the requirements of a
13 motion picture payroll services company, ~~as defined by this section,~~
14 that intends to be treated as an employer of motion picture
15 production workers pursuant to subdivision (a) shall file a statement
16 with the department that declares its intent to be the employer of
17 motion picture production workers, pursuant to this section, within
18 15 days after first paying wages to the workers. The statement
19 shall include identification of ~~all affiliated entities as defined by~~
20 ~~this section~~ *each affiliated entity*.
21 (2) Any employing unit operating as a motion picture payroll
22 services company as of January 1, 2007, that intends to be treated
23 as an employer of motion picture production workers pursuant to
24 this section, shall file a statement with the department that declares
25 its intent to be the employer of motion picture production workers,
26 pursuant to this section, by January 15, 2007. The statement shall
27 include identification of ~~all affiliated entities as defined by this~~
28 ~~section~~ *each affiliated entity*.
29 (3) Any motion picture payroll company that quits business
30 shall:
31 (A) Within 10 days of quitting business:
32 (i) File with the director, a final return and report of wages of
33 its workers, as required by Section 1116.
34 (ii) File all statements required by this subdivision.

1 (B) Forty-five days in advance of quitting business, notify the
2 ~~each~~ motion picture production ~~companies~~ *company* and allied
3 motion picture services ~~companies~~ *company*, with respect to which
4 they have been treated as the employer of the motion picture
5 production workers, of its intent to quit business.

6 (4) The director may prevent a motion picture payroll services
7 company that fails to file a timely statement, ~~as required by this~~
8 ~~section~~, from being treated as an employer of motion picture
9 production workers, for a period not to exceed the period for which
10 the statement is required.

11 (5) Any statement filed by a motion picture payroll services
12 company pursuant to this subdivision shall be applied to ~~all~~ *each*
13 ~~affiliated entities~~ *entity* of the motion picture payroll services
14 company in existence at the time the statement is filed.

15 (c) For each rating period beginning on or after January 1, 2007,
16 in which an employer operating as a motion picture payroll services
17 company obtains or attempts to obtain a more favorable rate of
18 contributions under this section in a manner that is due to deliberate
19 ignorance, reckless disregard, fraud, intent to evade,
20 misrepresentation, or willful nondisclosure, the director shall assign
21 the maximum contribution rate plus 2 percent for each applicable
22 rating period, the current rating period, and the subsequent rating
23 period. Contributions paid in excess of the maximum rate under
24 this section shall not be credited to the employing unit's reserve
25 account.

26 (d) (1) On and after January 1, 2007, whenever a motion picture
27 payroll services company creates or acquires a motion picture
28 payroll services company, or acquires substantially all of the assets
29 of a motion picture payroll services company, the created or
30 acquired motion picture payroll services company shall:

31 (A) Constitute a separate employing unit, notwithstanding
32 Sections 135.1 and 135.2.

33 (B) Have its reserve account and rate of contributions
34 determined in accordance with subdivision (e).

35 (C) Notify the department of the entity being created or acquired
36 and the nature of its affiliation to that entity.

37 (2) The department may promulgate regulations requiring a
38 motion picture payroll services company, prior to the creation or
39 acquisition of a motion picture payroll services company that will

1 be an affiliated entity, to seek the approval of the department to
2 apply ~~the provisions of this section to the created or acquired entity.~~

3 (e) When a motion picture payroll services company transfers
4 all or part of its business or payroll to another motion picture
5 payroll services company, ~~as defined by this section,~~ the reserve
6 account attributable to the transferor shall be transferred to the
7 transferee motion picture payroll services company, and the
8 transferee's rate of contribution shall be determined in accordance
9 with Section 1052. The transferee shall notify the department
10 within 15 days of the transfer of the business or payroll.

11 (f) For purposes of this section, ~~the following definitions apply:~~

12 (1) "Affiliated entity" means any one or more motion picture
13 payroll services company or companies that are united by factors
14 of common ownership, management, or control as prescribed by
15 Section 1061.

16 (2) "Allied motion picture services company" means any person
17 engaged in an industry closely allied with, and whose work is
18 integral to, a motion picture production company in the
19 development, production, or postproduction of a motion picture,
20 excluding the distribution of the completed motion picture and
21 ~~any activities~~ *activity* occurring thereafter, and who hires from the
22 same pool of craft and guild or union workers, actors, or extras as
23 a motion picture production company.

24 (3) "Motion picture" means a motion picture of any type,
25 including, *but not limited to*, a theatrical motion picture, a television
26 production, a television commercial, *or* a music video, ~~or any other~~
27 ~~type of motion picture~~ regardless of its theme or the technology
28 used in its production or distribution.

29 (4) (A) "Motion picture payroll services company" means any
30 employing unit that directly or through its affiliated entities meets
31 all of the following criteria:

32 (i) Contractually provides the services of motion picture
33 production workers to a motion picture production company or to
34 an allied motion picture services company.

35 (ii) Is a signatory to a collective bargaining agreement for one
36 or more of its clients.

37 (iii) Controls the payment of wages to the motion picture
38 production workers and pays those wages from its own account
39 or accounts.

1 (iv) Is contractually obligated to pay wages to the motion picture
2 production workers without regard to payment or reimbursement
3 by the motion picture production company or allied motion picture
4 services company.

5 (v) At least 80 percent of the wages paid by the motion picture
6 payroll services company each calendar year are paid to workers
7 associated between contracts with motion picture production
8 companies and motion picture payroll services companies.

9 (B) If the director determines that any employing unit is
10 operating as a motion picture payroll services company but is
11 failing to comply with any of the provisions of subparagraph (A)
12 of paragraph (4), the employing unit is subject to determination
13 of the employer-employee relationship pursuant to this code. When
14 the director's ruling becomes final, the director may preclude the
15 employing unit from being classified as a motion picture payroll
16 services company pursuant to this section for up to three years
17 from the date of the determination.

18 (5) "Motion picture production company" means any employing
19 unit engaged in the development, production, and postproduction
20 of a motion picture, excluding the distribution of the completed
21 motion picture and any activities occurring thereafter.

22 (6) "Motion picture production worker" means an individual
23 who provides services to a motion picture production company or
24 allied motion picture services company and who, with regard to
25 those services, is reported under this part as an employee by the
26 motion picture payroll services company. An individual who has
27 been reported as an employee by the motion picture payroll services
28 company, without regard to the individual's status as an employee
29 or independent contractor, shall be the employee of the motion
30 picture payroll services company for the purposes of this code
31 throughout the contractual period with the motion picture payroll
32 services company.

33 (7) "Wages" shall have the same meaning given the term in
34 Article 2 (commencing with Section 926) of Chapter 4 of Part 1
35 of Division 1, and shall include residual payments.

36 (g) If the director determines that an entity does not meet any
37 ~~of the requirements specified by~~ *requirement of* this section, the
38 director shall give notice of its determination to that entity pursuant
39 to Section 1206. The notice shall contain a statement of the facts
40 and circumstances upon which the determination was made. The

1 entity so noticed shall have the right to petition for review of the
2 director's determination within 30 days of the notice, as provided
3 in Section 1222.

4 (h) The director shall prescribe the form and manner of the
5 statements and information required to be filed or reported by this
6 section.

7 ~~(i) On or before December 31, 2010, the department may report~~
8 ~~to the Legislature regarding the impact of this section on the~~
9 ~~Unemployment Insurance Fund and the entertainment industry.~~

10 ~~(j) This section shall remain in effect only until January 1, 2012,~~
11 ~~and as of that date is repealed, unless a later enacted statute, which~~
12 ~~is chaptered before January 1, 2012, deletes or extends that date.~~

13 SEC. 2. Nothing in this act shall be construed to change existing
14 law as it relates to employing units that do not elect to be
15 considered a motion picture payroll services company pursuant to
16 Section 679 of the Unemployment Insurance Code.